CHARANJIT SINGH VER SINGH & ANOR.

v.

MAH SEOW HAUNG

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOFF MOHAMED J
[CIVIL SUIT NO. 9/1980]
16 MAY 1981

LAND LAW: *Torrens system of registration - Conveyancing practice regarding appointment of stakeholder - Agreement of sale of land - Time made essence of contract - Whether stipulation can be waived by conduct of parties.*

This was an application by the plaintiff for specific performance of an agreement of sale of land.

By an agreement dated 10 October 1979, the applicant purchased from the respondent a piece of land in Johore Bahru together with the house erected on it for RM97,000. Part payment of RM9,700 was made to the respondent, the balance to be paid within 2 months and charged from the date of the agreement. Time was made an essential part of the agreement.

On the same day the agreement was made, possession of the house and land was given to the purchaser for his occupation free from rent. The purchaser renovated it and had lived in it since.

The vendor had known that the purchaser would be applying for a bank loan to finance the purchase of the property. 9 days after the date of the agreement, the purchaser obtained a bank loan, on terms and conditions that the property be transferred to the purchaser and charged to the bank as security for the loan. The vendor was informed of this by the purchaser's solicitor on 27 October 1979 and requested to execute the transfer in order to enable the purchaser to obtain release of the bank loan. The solicitors gave an undertaking as stakeholder to protect the vendor's interest. The vendor did not reply. Another letter was sent on 18 November 1979 but the vendor refused to comply.

Upon the solicitor's personal undertaking to the bank, the loan was released on 16 December 1979. The rest of the purchase money was tendered to the vendor, but the vendor was not willing to execute the transfer. He contended that time being the essence of the contract, the purchaser had defaulted by affluxion of time. He forfeited the part payment already made and rescinded the contract.

In his affidavit in reply to the application, the vendor argued that he was not duty bound to execute any transfer of the property before the balance of the purchase price had been paid to him, and that the request by the solicitor that he should execute the transfer was an attempt to vary the terms of the agreement.

Held:

[1] The vendor's conduct on the matter of delay was not unquestionable. As in the Torrens system of registration of titles the property does not pass until registration, it is a necessary requirement in any agreement of sale of land to appoint a stake-holder who undertakes to retain the money until the transfer and the charge (where the money is to be paid by a chargee) had been registered and then to pass the money over to the vendor [*Tan Suan Sim v. Chang Fook Shen* [1980] 2 MLJ 66]. There would have been no undue delay if this practice had been followed by the vendor.

[2] The parties had, by their conduct, waived the stipulation making time as an essential part of the agreement. The vendor had known that the purchase was to be financed by a bank loan. He had given the purchaser possession of the house, to renovate the house and to live in it rent free. It was therefore evident that there was contemplation that the time might extend beyond the period of 2 months fixed for the completion of the transaction.

Specific performance in terms of the application was granted to the purchaser.

Case referred to:
Tan Suan Sim v. Chang Fook Shen [1980] 2 MLJ 66

For the plaintiffs/applicants - Chew Whye Jee
For the defendant/respondent - Ho Thian Cheh

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Also found at [1982] CLJ 76